

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT,  
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 2019DR002547XXXXSB  
DIVISION: FX

NICOLE GUERRIERO  
Petitioner,

and

BETHANY FEDORENCHIK GUERRIERO,  
Respondent.

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**MEMORANDUM OF LAW IN OPPOSITION  
TO PETITION FOR RESTRAINING ORDER**

COMES NOW the Respondent, BETHANY FEDORENCHIK GUERRIERO, by and through undersigned counsel, NELLIE L. KING, and hereby files this memorandum of Law in Opposition to Petition for Restraining Order. As grounds therefore, the Respondent would state:

1. This cause is set for Tuesday, May 21, 2019, at 1:30 p.m. for a hearing on the Petition for Injunction for Protection Against Stalking Violence before the Honorable Charles Burton in Room #2, South County Courthouse, 200 W. Atlantic Avenue, Delray Beach, FL 33444.
2. The Petitioner is a Lieutenant with the Delray Beach Police Department. The Respondent is an Officer with the Palm Beach Gardens Police Department. The allegations have resulted in the Respondent being placed on administrative duty with the Palm Beach Gardens Police Department, the Respondent has had to relinquish all department-issued firearms and equipment, and there is the possibility she could lose her employment as a result of Petitioner's allegations (See **Attachment 1**).
3. The Petitioner and Respondent were married on February 14, 2014.
4. The Petitioner and Respondent together adopted a 7-year old child, K.G., on February 14, 2017, after fostering the child and undergoing a thorough background investigation through the Department of Children and Families (DCF).
5. In April 2017, approximately 1 ½ months after Petitioner and Respondent adopted K.G., the Petitioner apprised Respondent she was "done with the

- relationship” and she wanted a divorce. The Respondent was opposed to the separation and divorce and had no idea the end of the relationship was impending, particularly given the needs of the child the couple had just adopted, as well as the recency of the adoption.
6. Petitioner and Respondent thereafter separated and the marriage was dissolved by this very Court on October 16, 2018 (Case No.: 502017DR009119XXXXXSB).
  7. According to a police report attached to the Petition, there were approximately 100,000 text and email communications **between the parties** subject to review by the DBPD. There were 44,000 text message communications **between the parties**, from both before and after the divorce, which were culled through by Officer Stephanie Baker with the Delray Police Department (DBPD). Of these 44,000 texts, Officer Baker contends in the 2017 police report that there were “approximately 200 messages **between them** [that] were concerning.”
  8. The Delray Beach Police Department is the very agency where the Petitioner currently works as a Lieutenant, and where she was the head of Internal Affairs at the time of the initial report.
  9. This 2017 police investigation did not result in any criminal charges, or restraining order petitions, being filed against the Respondent – until recently – when the report was pulled from the shelf. The Respondent had no idea she was being investigated by the co-worker, and good friend, of the Petitioner until she received the Petition for the Restraining Order. Petitioner avers that the old allegations should now serve as the basis for the restraining order, as well as the basis to criminally accuse the Respondent of misdemeanor stalking.
  10. The Respondent avers that the Petitioner abused her position as a Lieutenant with the Delray Beach Police Department for her own personal agenda and in contravention of conflict of interest policies, as well as professional standards. The efforts of the Petitioner are in bad faith, fail to meet the standards for an injunction, and should be dismissed.

**THE FACTS AND LAW DO NOT SUPPORT THE PLACEMENT OF  
A RESTRAINING ORDER AGAINST THE RESPONDENT**

An investigation into the basis for the TRO reveals extraordinary effort and expense by Officer Stephanie Baker with the Delray Beach Police Department (DBPD) at the direction of the Petitioner, DBPD Lt. Nicole Guerriero. Officer Baker contends she spent an estimated 3 months’ time simply documenting Petitioner’s claims that she was the victim of a Second Degree

Misdemeanor. The efforts lack credibility because of the flawed and tainted investigation by the very agency which employs the Petitioner.

First, the matters complained of in the Petition are questionable from a temporal standpoint. The law enforcement investigation commenced on September 16, 2017, **a year prior to the divorce decree** of October 16, 2018, and unbeknownst to the Respondent. The issues now claimed were never incorporated into the divorce settlement, or Marital Settlement Agreement, approved by this Court. This civil divorce proceeding represented the appropriate mechanism jurisdictionally, and from a timing standpoint, to raise issues of this nature. It is only now, years later, that the Petitioner seeks to utilize a report from 2017 to substantiate the TRO Petition.

Second, the matters complained of in the Petition are questionable from the standpoint of the relationships between those involved. The Petitioner used her executive position in the DBPD to wage a personal vendetta against her ex-spouse which is neither supported by the facts, nor the law. The motivation for the ultimate directive by the Petitioner to have her ex-wife served with the TRO, and arrested by her own police department, **two years after the initial report was drafted**, was a simple question mandated by the terms of the couple's Marital Settlement Agreement. The trigger was the Respondent, Bethany Guerriero, asking the Petitioner, Lt. Nicole Guerriero, where she was taking their daughter on vacation in March 2019. The Petitioner then orchestrated the "re-investigation" of the old 2017 report. Again, this report was intentionally concealed from the Respondent in September 2017, nor was it revealed to her during the pendency and finalization of the divorce. The Respondent was never contacted during the investigation to give a statement, a practice Officer Baker usually employs in matters such as this, as confirmed by the police report.<sup>1</sup>

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<sup>1</sup> Petitioner enlisted her good friend and colleague, DBPD Officer Stephanie Baker, in the effort to have Respondent

It appears as if the TRO and arrest came about because the question pertaining to their daughter would have forced Petitioner to reveal that she was taking their daughter to the home of Monroe County Assistant State Attorney Colleen Dunne. The Petitioner's plan was to take the couple's newly-adopted daughter to Key West to spend Spring Break with Dunne. The fact of Petitioner's connection to Dunne, or the nature of their relationship, was not important, nor newsworthy – except the Petitioner clearly did not want this information to come out. Colleen Dunne was the lead prosecutor in the on-going criminal case involving the death of Petitioner's good friend and colleague, DBPD Officer Christine Braswell, who was killed in a motor vehicle accident on April 8, 2017, in Key West (*State v. Lacey Morris*, Monroe County Case No.: 2017CF000317).

Despite her claims otherwise, the Petitioner's involvement in the Lacey Morris vehicular homicide prosecution goes beyond her very close friendship with the victim, Officer Braswell. The text messages between Petitioner and Respondent reveal the toll Braswell's death had on the Petitioner – mentally and emotionally. The text messages reveal that the Petitioner's response to the loss of her colleague, Braswell, served as the catalyst for the breakup of the couple when Respondent expressed concerns over Petitioner's drinking. More recently, the Petitioner travelled to Key West during the pendency of the criminal case and presented evidence and other assistance during the prosecution and recent sentencing hearing of Lacey Morris in April 2019. The true nature of Petitioner's relationship with Dunne was not revealed to the defense in the Lacey Morris criminal case, the trial court, and most probably, the Delray Beach Police Department. This

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arrested and served with the TRO. Petitioner specifically advised Baker to keep the report from being known to Respondent. Petitioner then directed Baker to pull the 2017 report "off the shelf," and then sought, a year and a half later, to invoke police arrest powers against her ex. The text messages collected by Baker are not even recent (they end on January 10, 2019), indicating there is no imminent threat and no basis for an arrest or a TRO.

secrecy could be attributable to the appearance of impropriety attendant to the situation, whereby there is an active criminal case which could have been jeopardized.

Petitioner's anticipated denials about this topic are refuted by the timeline, as well as her reactive conduct in seeking a TRO and an arrest of the one person simply seeking to know where she was taking their daughter: the Respondent. On March 20, 2019, Officer Baker sent an email to DBPD Assistant Chief Crane-Baker regarding her investigation with the following text:

*"This is a lot harder then one would think due to not being able to add the 8 pages of text. I was requested to try and have this to the ASA's office by Friday so I have two days to get this knockedout...eeeekkkk..Can you please take a look and let me know what you think. Steph"* (See **Attachment 2**).

It is unclear what necessitated this emergency response, but based on the following timeline it appears it was all initiated by the request from Respondent regarding an address where her daughter would be staying (See **Attachment 3**, email communications 3/19/2019, in reverse send order):

**Tuesday, 3/19/2019, Respondent email to Petitioner:**

*Per Article IV section 4.6 I [of the Marital Settlement Agreement] I would appreciate an address of where you will be with K.G. as your trip will be overnight and out of the county for at least two days. Thank you.*

**Tuesday, 3/19/2019, 08:01 Petitioner responded:**

*Due to your past behavior and actions, I do not feel safe providing you the address of our whereabouts. We will be staying in Key West for 2 nights and K.G. will be in my care at all times. She will have her phone at all times and you are free to contact her at any time. She will be back with me on Friday. If you prefer, I will drop her off to your home when you get done with work so that she does not need to get up early to leave my house.*

**Tuesday, 3/19/2019, 08:08 Petitioner responded:**

*Per the agreement I need an address and if it's not provided, I will have my attorney immediately file for a violation in said agreement.*

**Tuesday, 3/19/2019, 08:33**

Officer Baker prepares a supplement to Report Number 17-014767 regarding text messages. Due to the length of the report it appears it was cut and pasted into the report that morning.

**Tuesday, 3/19/2019, 08:49**

A print stamp indicates Officer Baker prints the 17-014767 Supplemental Report marked at the top "NOT SUPERVISOR APPROVED." The Supervisor Review Date/Time section contains the language "NOT REVIEWED." This document was later provided to Petitioner to include on her TRO request.

**Tuesday, 3/19/2019, 08:53**

Officer Baker prints the remainder of Report 17-014767. These documents are also provided to Petitioner and later included in the TRO request.

**Tuesday, 3/19/2019**

Correspondence marked urgent from family lawyer Brittani Gross with the Law Firm of Charles D. Jamieson, P.A., is emailed to Petitioner (**See Attachment 4**).

This legal correspondence serves as notice to the Petitioner that she is in non-compliance with the Parenting Plan of the Marital Settlement Agreement regarding "Informed Whereabouts of the Minor Child." The document concludes by indicating the law firm would immediately pursue contempt and enforcement proceedings, sanctions, and attorney's fees if the Petitioner did not immediately comply with the Parenting Order.

**Tuesday, 3/19/2019, 15:03**

The Petitioner files a TRO Petition with the Palm Beach County Clerk of Court, attaching the above documents obtained from Officer Baker.

**Tuesday, 3/19/2019, 16:27**

A TRO is issued against the Respondent by this Honorable Court.

**Tuesday, 3/19/2019, 21:11**

Petitioner emails Respondent's attorney, Brittani Gross with the Law Firm of Charles D. Jamieson, P.A., and indicates: "*Bethany was served with a restraining order this evening. I believe this will create some ambiguity as to how the exchanges of our daughter will occur moving forward...*" (See Attachment 5).

Petitioner never provides the address where the child was going on vacation and this Court is never apprised via the Petition for TRO of the most recent communications referenced above regarding efforts by the Respondent, and her family attorney, to get Petitioner to comply with the Marital Settlement Agreement.

**Wednesday, 3/20/2019, 20:26 Email from Det. Kearney to Capt. Crane-Baker**

*"This is a lot harder then one would think due to not being able to add the 8 pages of text. I was requested to try and have this to the ASA's office by Friday so I have two days to get this knocked out...eeeekkkk..Can you please take a look and let me know what you think. Steph"* (See Attachment 2).

**Thursday, 3/21/2019**

Det. Kearney files the Probable Cause affidavit with the State Attorney's Office.

**Wednesday, 3/27/2019, 0900**

Warrant issued for Respondent's arrest.

From the above timeline, the only thing that changed in Petitioner and Respondent's relationship was Respondent asking Petitioner for an address and itinerary of where she was taking their daughter in Key West. It is clear: Petitioner did not want to comply with the terms of the Court ordered Parenting Plan. Petitioner then enlisted Officer Baker to ram through a TRO Petition and arrest warrant in the Palm Beach County Courts so Petitioner could leave the jurisdiction without providing the information required by court order.

The arrest and TRO are based on investigative work from 2017 which was stale, irrelevant, and retaliatory given Petitioner's very behavior in engaging and continuing communication and

personal contact with Bethany – 1000s and 1000s and 1000s of messages. Petitioner now claims she fears the Respondent, despite hundreds of thousands of pre and post-divorce communications between the couple, many initiated by the Petitioner herself when she was not getting attention or response from Respondent. Officer Baker makes sweeping and inaccurate claims about the communications. An analysis of the text messages reveals that, of the 44,049 messages, approximately **19,816 are from the Petitioner to Respondent.**

This claim of being stalked also comes despite numerous instances where the Petitioner stayed at the Respondent's house, despite the exchange of expensive gifts and dinner outings (which Petitioner gladly accepted), hospital visits, and despite at least one sexual encounter between the two. Petitioner also maintained a key to Respondent's house during the time period in question and would come over frequently to let her dog out. All of this conduct occurred **after** the Petitioner claimed she did not like the communications from her ex-wife; after she started reporting information to Officer Baker.

Officer Baker advised the Petitioner in 2017 that if thing were so bad, she should file for a TRO, pursue criminal charges, insist that the issues be taken up civilly in the divorce proceedings, and limit contact with the Respondent to family law platforms like the website "Our Family Wizard." Per the police report, Officer Baker also wanted to contact the Respondent in an effort to advise her to cease contact with the Petitioner, something the report indicates DBPD typically does in these types of cases because it deters conduct. However, the Petitioner specifically instructed Officer Baker **not** to pursue this protocol.<sup>2</sup>

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<sup>2</sup> Perhaps the report would be contradicted by Petitioner's in-depth DCF adoption investigation, whereby she attested to the stability and nurturing relationship she and Respondent had in order to facilitate their very recent adoption of K.G. The couple's adoption of their daughter came just a month and a half before Petitioner advised Respondent she wanted a divorce, something DCF was not made aware of, then or now.



If Officer Baker had contacted the Respondent (someone who was known to her) and interviewed her at that time, maybe the situation would have rectified itself. The divorce was not finalized at that time and the issues could have been resolved in civil court via the divorce proceedings. Petitioner now seeks to use this information to her advantage when it suits her, not because she is in fear or needs the protection of this Court. Despite claiming she was scared, Petitioner ignored all of Officer Baker's advice, opted to have a relationship with her claimed "stalker," and then insisted 2 years later she needs protection.

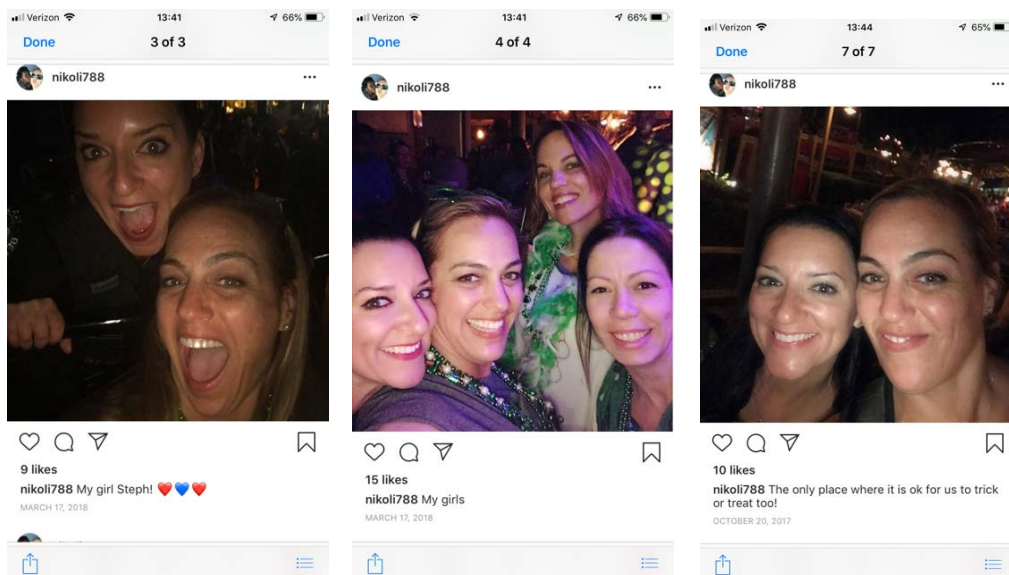
The Petitioner does not include the child they adopted together, K.G., in the Petition for the TRO, another clear investigative fact that, if considered in any other case, would demonstrate Petitioner is not afraid of her ex-wife. Notably, Petitioner did list Officer Baker in the TRO as a "victim," despite Baker's role as the investigating officer, and despite any evidence whatsoever of threats by Respondent against Baker. This demonstrates a lack of objectivity in this investigation: there is simply no credibility in this staged effort

Perhaps the most concerning aspect of this effort was the fact that the Petitioner, the then-head of the Internal Affairs Department for DBPD, directed a subordinate, Officer Stephanie Baker, to investigate and arrest her wife. Clearly, this should not have been handled by the very same department. Even if the claim is made that DBPD was well within its rights to help their own, the Petitioner, **DBPD should not have** in this particular instance. There is more here than other cases: the incestuous nature of this investigation was not made known to this Honorable Court which reviewed the TRO, nor the State Attorney's Office. In fact, this was an issue the Petitioner and Officer Baker tried to downplay, if not outright conceal. The motives of the Petitioner, and her role within the very law enforcement agency tasked with investigating her accusations, substantiate this was a malicious prosecution. "The general rule is that if the

defendant [in a malicious prosecution case] merely gives a statement to the proper authorities, leaving the decision to prosecute entirely to the uncontrolled discretion of the officer or if the officer makes an independent investigation, the defendant is not regarded as having instigated the proceeding. However, if the [civil] defendant's **persuasion is the determining factor in inducing the officer's decision or if he gives information which he knew to be false and so unduly influences the authorities, then the defendant may be held liable.**" *McCraney v. Barberi*, 677 So. 2d 355 (Fla. 1<sup>st</sup> DCA 1996).

The bottom line is that all of those involved in this investigation were close personal friends, not just work colleagues, not just casual acquaintances. Officer Baker and the Petitioner have more than a work relationship: their daughters are close friends, attend dance classes together, and they are over at each other's houses all the time. Petitioner attended wedding events in honor of Baker (including a "bachelorette" party), and the Petitioner and Officer Baker have taken vacations together.

The Petitioner qualifies her relationship with Baker, downplays it. Officer Baker, too, has denied the nature of her relationship with Petitioner, denying, for example, that she and Petitioner had ever vacationed together. However, this was not true: questions to ASA Colleen Dunne (referenced above) revealed Dunne was with the DBPD ladies, the Petitioner and Officer Baker, for one such vacation they took when they all travelled to Key West. Petitioner and Baker have also travelled to Walt Disney World together. Officer Baker attended the adoption ceremony for the couple's daughter, K.G. On social media (see below), the Petitioner and Officer Baker are seen partying at bars, with Petitioner calling witness and investigating Officer Baker "My girl, Steph."



It was revealed that even Monroe County ASA Colleen Dunne and Officer Baker exchange phone calls and personal visits with each other. To the outside, this does not pass the test of an objective investigation. All of these factors which were not revealed, or were withheld,<sup>3</sup> via Officer Baker's investigation (as well as other alleged misconduct unrelated to this TRO proceeding) have been referred for an Internal Affairs review with DBPD. The impact of Respondent's actions on Petitioner's livelihood, reputation, and relationship with her daughter is substantial. The seriousness of the alleged misconduct identified herein warrants this Court dismissing the TRO, as well as a thorough, and independent, investigation.

### **THE LAW SUPPORTS THE COURT'S DENIAL OF THE RESTRAINING ORDER**

As the Court is well aware, divorce is never easy, particularly when there are children involved. Here, however, the impact of the divorce on K.G. is heightened, serving to re-traumatize her. K.G. had not been with the couple for very long: the adoption was only finalized 1 ½ months

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<sup>3</sup> See *Holton v. Handley*, 719 So. 2d 1005 (Fla. 5<sup>th</sup> DCA 1998)(discussion regarding the intentional withholding of information to the State Attorney's Office in a prosecution).

before the Petitioner called it quits. K.G. was adopted by the parties after being removed from a very tumultuous family situation. She was neglected and abandoned by her drug-addicted parents. K.G. has a severely autistic brother she is not currently in contact with. K.G. was nonverbal until the age of 5 and in foster care. K.G. attends weekly therapy sessions (and has since the age of 5). The Respondent, much less K.G., could not see it coming when the Petitioner decided not just to end the marriage, but to also terminate the family unit they had created together via their claimed commitment to K.G. Discord in this situation is understandable.

Disagreements and acrimony are not enough to satisfy the elements for an injunction. *Ravitch v. Whelan*, 851 So. 2d 271, 273 (Fla. 5<sup>th</sup> DCA 2003)(evidence of emails, voicemails, and phone conversations not enough); *Power v. Boyle*, 60 So. 3d 496, 497-99 (Fla. 1<sup>st</sup> DCA 2011); *Corrie v. Keul*, 160 So. 3d 97, 98 (Fla. 1<sup>st</sup> DCA 2015). Even overt threats have been held to be insufficient to satisfy injunctive relief. *Slack v. Kling*, 959 So. 2d 425, 426 (Fla. 2<sup>nd</sup> DCA 2007)(threat Respondent “would make an arrangement” not enough to demonstrate substantial emotional distress.”). Anger and resentment can certainly be anticipated in the context of certain divorce proceedings, particularly when there is an adopted child new to the situation.

K.G. had emotional and behavioral issues before the adoption: the impact of the divorce has understandably exacerbated the issues, creating more instability and turmoil in her life. The communications between the parties bear this out: the stress of the divorce is evident on the part of all involved. Importantly, not getting along, behaving badly, and sending uncivil messages is not enough to constitute stalking. *Dailey v. Roth*, 262 So. 3d 268 (Fla. 1<sup>st</sup> DCA 2019).

The communications closest in time to the Petition for the TRO deal with K.G.’s needs and the Respondent’s efforts with K.G.’s therapist to find solutions for the little girl. The messages are not threatening or harassing or inappropriate (**See Attachment 6**, emails between Petitioner

and Respondent for the month of March 2019). If there is a legitimate purpose for the communications, they do not constitute or substantiate stalking. *Goudy v. Duquette*, 112 So. 3d 716 (Fla. 2<sup>nd</sup> DCA 2013). Courts have “generally held that contact is legitimate where there is a reason for the contact other than to harass the victim.” *Venn v. Fowlkes*, 257 So. 3d 622 (Fla. 1<sup>st</sup> DCA 2018) *citing* *O’Neill v. Goodwin*, 195 So. 3d 411, 413 (Fla. 4<sup>th</sup> DCA 2016). There exists a legitimate purpose for the communications between the parties given the daughter they share in common.

Petitioner also maintains that she has been the recipient of thousands of messages and communications. Officer Baker then asserts that the number of communications represents the evidence of stalking. However, the report is misleading because the Petitioner herself sends almost as many messages, if not more, than the Respondent. As but one example of the manner in which the report is inaccurate, Officer Baker contends at Page 8 that during a one-week period (8/10/17 - 9/4/17), the Respondent sends 349 text messages to Petitioner. A review of the messages, though, reveals the Petitioner sent 486 messages to Petitioner during this exact timeframe, a fact not included in the report. The report also misstates the content of messages and intentionally excludes all negative content sent by the Petitioner, of which there are many such messages. If a person reacts calmly to messages, or indeed participates in the tone, manner, and substance of the conversation they later complain of, this cannot substantiate a TRO for stalking. *See Jones v. Jackson*, 67 So. 3d 1203 (Fla. 2<sup>nd</sup> DCA 2011). Further, “[u]nder Florida law, a reasonable person does not suffer substantial emotional distress easily.” *Venn v. Fowlkes*, 257 So. 3d 622 (Fla. 1<sup>st</sup> DCA 2018) *citing* *Burroughs v. Corey*, 92 F.Supp.3d 1201, 1205 (M.D. Fla. 2015). The statements here do not establish substantial emotional distress, especially when considered in context with Petitioner’s conduct and messaging with Respondent.

Petitioner also attempts to bring other people into the allegations in the Petition for TRO, including the investigating officer, Stephanie Baker, as well as a Charles Navarro and an Amy Johnson. These are not named petitioners in the request for relief: yet they are named as needing the Court's protection. General allegations involving others is not enough to support the finding of an injunction. *Corrie v. Keul*, 160 So. 3d 97 (Fla. 1<sup>st</sup> DCA 2015). The Petitioner's conduct with Navarro during the pendency of her marriage to Respondent was cause for concern, not only as it relates to the true nature of his relationship with Petitioner, but also as to the impact Navarro would have on K.G. when Petitioner exposed K.G. to yet another "significant other." K.G. attended weekly therapy sessions as it was due to the unstable home life she transitioned from through the foster care system. After the separation of the parties, which was literally 1 ½ months after she was adopted, K.G. was even more emotionally impacted by her home life. K.G. now saw her mommies living separately; a very confusing and traumatizing situation which continues to wreak havoc in this child's life, as well as create stressors on the Respondent because she wants to "fix" the situation for K.G. and she can't.

In *Leach v. Kersey*, a wife was contacting her husband's girlfriend. 162 So. 3d 1104 (Fla. 2<sup>nd</sup> DCA 2015). The court in *Leach*, in finding that her messages did not constitute stalking, said that "a reasonable woman who had an eighteen-month affair with another woman's husband might well expect to hear the scorn of an angry wife." *Id.* Thus, if a reasonable person would expect it, they can't be deemed to have suffered distress. This situation was created by the Petitioner's own making: she decided to separate and file for divorce immediately after adopting a 7-year old child with the Respondent. She then became involved in other relationships immediately thereafter. Not enough therapy in the world can fix the messaging conveyed to K.G. by the Petitioner's choices. Petitioner has now taken up with yet another stranger to K.G. and the Respondent is left

again to deal with the fallout. This situation cannot be said to be unexpected given the circumstances.

As far as content analysis, just because there is a list of texts, calls, or emails, this does not constitute stalking if the messages are not also threatening in the eyes of a reasonable person. *See Touhey v. Seda*, 133 So. 3d 1203 (Fla. 2<sup>nd</sup> DCA 2014); *Slack v. King*, 959 So. 2d 425, 426 (Fla. 2<sup>nd</sup> DCA 2007). In *Robinson v. Robinson*, 257 So. 3d 1187 (Fla. 5<sup>th</sup> DCA 2018), an injunction was denied where wife alleged husband called her at work when she was not there, threatened to call her HR Department, and had called her parents and brother to influence them to contact wife. The court held that the evidence was insufficient where, “there was no testimony that wife had lost her job or that her job was in jeopardy, nor was there any evidence that husband had threatened wife in these communications with any act of violence.” *Id.* Even if the recipient of the communications asks the sender to stop contacting them, continuing messages do not constitute stalking without more. *Ravitch v. Whelan*, 851 So. 2d 271 (Fla. 4<sup>th</sup> DCA 2003). The Petitioner has not apprised the Court of the whole story and utilized her position and influence with the Delray Beach Police Department in order to gain an unfair advantage over her ex-wife. This Court should reject these efforts.

It is evident that these issues should be resolved via the family law case. Counsel for the Respondent has indicated to counsel for the Petitioner that Respondent would agree to an amendment to the Marital Settlement Agreement whereby the communication issues would be addressed. An agreement for the parties to communicate through Our Family Wizard was proposed. This case does not satisfy the requirements for a restraining order. The Respondent should be allowed to return to duty in her role as an officer with the Palm Beach Gardens Police Department. This Court should therefore deny the Petition for Protection Against Stalking

Violence and refer the matter for further family law proceedings.

WHEREFORE, based on the foregoing grounds, and others to be argued *ore tenus*, the Respondent respectfully requests this Court enter an Order denying the Petition for Restraining Order.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished via the Florida E-Portal to Andrea Reid, The Reid Law Group, 2101 NW Corporate Blvd., Suite 410, Boca Raton, FL 33431, at [e-service@reidlawgroup.com](mailto:e-service@reidlawgroup.com) on this 20th day of May, 2019.

Respectfully submitted,

Law Offices of Nellie L. King, P.A.  
319 Clematis Street, Suite 107  
West Palm Beach, FL 33401  
Tele. : 561-833-1084  
Fax. : 561-833-1085  
E-mail: Nellie@CriminalDefenseFla.com

/s/ Nellie L. King  
NELLIE L. KING  
Fla. Bar No.: 0099562




# Palm Beach Gardens Police Department

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## INTEROFFICE MEMORANDUM

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**TO:** Ofc. Bethany Guerriero  
**FROM:** Chief Clinton Shannon   
**DATE:** March 20, 2019  
**SUBJECT:** Administrative Leave/Modified Duty

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Effective Tuesday, March 19, 2019, following the service of a Temporary Injunction for Protection Against Stalking Violence by the Palm Beach Sheriff's Office against you, you have been placed on administrative leave with pay. Effective Thursday, March 21, 2019, you will be placed on modified duty and assigned to Evidence pending the outcome of this case.

Upon the service of the Injunction, the Palm Beach Sheriff's Office took possession of your Department-issued Glock 17 and Bushmaster XM-15 rifle. Upon receipt of this letter, you are hereby directed to turn in all remaining department-issued equipment, except uniforms, to Sgt. Javier Garcia.

During this period of leave, you shall not wear any part of the official uniform, act in the capacity of, or represent yourself as a police officer in any manner, nor perform any off-duty police work.

On Thursday, March 21 and Friday, March 22, 2019, your duty hours while assigned to Evidence will be 8:00 am to 5:00 pm. Effective Monday, March 25, 2019, your work week will consist of 40 hours, Monday through Friday, from 8:00 am to 4:00 pm until further notice. You are to wear civilian clothes while assigned in this capacity and will report directly to Assistant Chief Dominick Pape.

CS/amm

cc: Ron Ferris, City Manager  
Stephen J. Stepp, Deputy City Manager  
Sheryl Stewart, Human Resources Administrator  
Asst. Chief Dominick Pape  
Asst. Chief James Stormes  
Sgt. Javier Garcia

ATTACHMENT 1

**From:** [Kearney, Stephanie](#)  
**To:** [Crane-Baker, John](#)  
**Subject:** PC  
**Date:** Wednesday, March 20, 2019 8:26:00 PM  
**Attachments:** [PC.docx](#)

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This is a lot harder then one would think due to not being able to add the 8 pages of text. I was requested to try and have this to the ASA's office by Friday so I have two days to get this knocked out...eeeeekkkk..Can you please take a look and let me know what you think. Steph

ATTACHMENT 2

Begin forwarded message:

**From:** [flashpoint321@gmail.com](mailto:flashpoint321@gmail.com)  
**Date:** March 19, 2019 at 08:08:41 EDT  
**To:** Nicole Guerriero <[nikoli788@aol.com](mailto:nikoli788@aol.com)>  
**Subject: Re: Your current trip**

Per the agreement I need an address and if it's not provided, I will have my attorney immediately file for a violation in said agreement.

Bethany Fedorenchik  
Sent from my iPhone

On Mar 19, 2019, at 08:01, Nicole Guerriero <[nikoli788@aol.com](mailto:nikoli788@aol.com)> wrote:

Due to your past behavior and actions, I do not feel safe providing you the address of our whereabouts. We will be staying in Key West for 2 nights and K [REDACTED] will be in my care at all times. She will have her phone at all times and you are free to contact her at any time. She will be back with me on Friday. If you prefer, I will drop her off to your home when you get done with work so that she does not need to get up early to leave my house.

Sent from AOL Mobile Mail  
Get the new AOL app: [mail.mobile.aol.com](mailto:mail.mobile.aol.com)

On Tuesday, March 19, 2019, [flashpoint321@gmail.com](mailto:flashpoint321@gmail.com) <[flashpoint321@gmail.com](mailto:flashpoint321@gmail.com)> wrote:

Per Article IV section 4.6 I would appreciate an address of where you will be with K [REDACTED] as your trip will be overnight and out of the county for at least two days. Thank you.

Bethany Fedorenchik  
Sent from my iPhone

ATTACHMENT 3

On Tuesday, March 19, 2019, Brittani Gross <[bgross@cjamiesonlaw.com](mailto:bgross@cjamiesonlaw.com)> wrote:

Ms. Guerriero,

Attached please find an Urgent Correspondence of today's date regarding your non-compliance with the parenting plan.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Brittani S. Gross, Esq.

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"Because Your Family Counts, You Can Count on Us"

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ATTACHMENT 4



THE LAW FIRM OF  
**CHARLES D. JAMIESON, P.A.**



Charles D. Jamieson, Esquire  
*Board Certified in Marital and Family Law*

Doreen Inkeles, Esquire  
*Board Certified in Marital and Family Law*

Nikki Devidze, Esquire  
Associate Attorney

Brittani S. Gross, Esquire  
Associate Attorney

March 19, 2019

**Sent via Email**

[Nikoli788@aol.com]

Nicole Guerriero  
4553 Highgate Drive, Unit C  
Delray Beach, FL

Re: Guerriero v. Guerriero  
**NON-COMPLIANCE WITH PARENTING PLAN**

Dear Ms. Guerriero:

As you know, this office represents your Former Spouse, Ms. Fedorenchik. This letter will serve to notify you that you are in non-compliance with the *Agreed Parenting Plan* by failing to keep Ms. Fedorenchik informed regarding the whereabouts of the minor child.

Pursuant to Article IV, Paragraph 4.6. Informed Whereabouts:

Each parent shall keep the other parent informed regarding the whereabouts of the minor child, including with respect to overnight visits with relatives or friends. If a child will spend more one or more overnights outside of the residence of the parent, that parent will provide to the other parent, upon request, **the addresses**, telephone numbers of each location, the length of the stay, and the name of all persons who may provide care for the child during the stay, **the departure time** and date, **and the time** and date **of the child's return or arrival**.

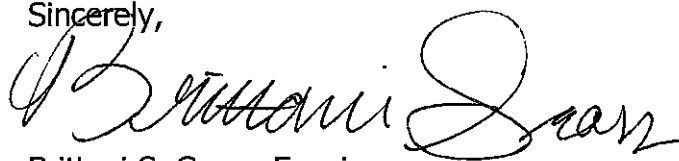
You have indicated to Ms. Fedorenchik that you intend to take the child to Key West tomorrow until Friday. You are refusing to provide the address of where the minor child will be staying, and you have failed to inform Ms. Fedorenchik of the minor child's departure and return times.

Guerriero  
Page 2  
March 19, 2019

If you do not comply with the *Agreed Parenting Plan* immediately and provide Ms. Fedorenchik with the address of whether the minor child will be staying in Key West, as well as her departure and return times, we will pursue contempt and enforcement proceedings and seek attorneys' fees and sanctions against you under Section V of the *Marital Settlement Agreement* for all fees and costs incurred in connection with any litigation on your non-compliance.

We are prepared to move the Court to find you in contempt and will be seeking sanctions. I look forward to hearing from you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Brittani S. Gross".

Brittani S. Gross, Esquire

**From:** Nicole Guerriero <[nikoli788@aol.com](mailto:nikoli788@aol.com)>

**Sent:** Tuesday, March 19, 2019 9:11 PM

**To:** Brittani Gross <[bgross@cjamiesonlaw.com](mailto:bgross@cjamiesonlaw.com)>

**Subject:** Re: Guerriero and Guerriero: URGENT CORRESPONDENCE from Attorney for Bethany Fedorenchik RE NON-COMPLIANCE WITH PARENTING PLAN

Bethany was served with a restraining order this evening. I believe this will create some ambiguity as to how the exchanges of our daughter will occur moving forward. Due to the fact that we have no contact during exchanges, I am agreeable with them continuing as is.

Also, I am offering her the right of first refusal for April 4th through April 7th. I am willing to trade for Beth's days the week before or the week after if she is agreeable.

Please let me know.

Sent from AOL Mobile Mail

Get the new AOL app: [mail.mobile.aol.com](http://mail.mobile.aol.com)

On Tuesday, March 19, 2019, Brittani Gross <[bgross@cjamiesonlaw.com](mailto:bgross@cjamiesonlaw.com)> wrote:

Ms. Guerriero,

Attached please find an Urgent Correspondence of today's date regarding your non-compliance with the parenting plan.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

**ATTACHMENT 5**

Begin forwarded message:

**From:** Nicole Guerriero <[nikoli788@aol.com](mailto:nikoli788@aol.com)>  
**Date:** March 7, 2019 at 15:13:17 EST  
**To:** [flashpoint321@gmail.com](mailto:flashpoint321@gmail.com)  
**Subject:** Re: Raja Trial/On Call

Ok

Sent from AOL Mobile Mail  
Get the new AOL app: [mail.mobile.aol.com](http://mail.mobile.aol.com)

On Thursday, March 7,  
2019, [flashpoint321@gmail.com](mailto:flashpoint321@gmail.com) <[flashpoint321@gmail.com](mailto:flashpoint321@gmail.com)> wrote:

We just received word that our schedules will not be affected now and it's back to regular duty. If something is to change, I'll let you know immediately.  
Thanks.

Bethany Fedorenchik  
Sent from my iPhone

On Mar 7, 2019, at 13:03, Nicole Guerriero <[nikoli788@aol.com](mailto:nikoli788@aol.com)> wrote:

Got it

Sent from AOL Mobile Mail  
Get the new AOL app: [mail.mobile.aol.com](http://mail.mobile.aol.com)

# ATTACHMENT 6



On Thursday, March 7,  
2019, [flashpoint321@gmail.com](mailto:flashpoint321@gmail.com) <[flashpoint321@gmail.com](mailto:flashpoint321@gmail.com)> wrote:

I will pick K [REDACTED] up at aftercare as I have dinner plans with her.  
As of now, we are still waiting to hear if we have to report to work tomorrow even though he was just convicted of murder. I will keep you posted. Thanks.

Bethany Fedorenchik  
Sent from my iPhone

On Mar 6, 2019, at 13:06, Nicole Guerriero <[nikoli788@aol.com](mailto:nikoli788@aol.com)> wrote:

I will take her.

Sent from AOL Mobile Mail  
Get the new AOL app: [mail.mobile.aol.com](mailto:mail.mobile.aol.com)

On Wednesday, March 6,  
2019, [flashpoint321@gmail.com](mailto:flashpoint321@gmail.com) <[flashpoint321@gmail.com](mailto:flashpoint321@gmail.com)> wrote:

Due to the closing arguments in the Raja trial happening today, we have been put on standby/on call status for this this coming weekend (Friday, Saturday and Sunday). Should I get called into work, I am offering you the right to first refusal to take K [REDACTED]. If you can not, I have someone else who can. Please let me know, and I will keep you updated. Thanks.

Bethany Fedorenchik  
Sent from my iPhone

Begin forwarded message:

**From:** Nicole Guerriero <[nikoli788@aol.com](mailto:nikoli788@aol.com)>

**Date:** March 6, 2019 at 15:59:53 EST

**To:** [flashpoint321@gmail.com](mailto:flashpoint321@gmail.com)

FYI

Please acknowledge receipt as K [REDACTED] ♥ advised that you told her that you do not receive the things I send you.

Sent from AOL Mobile Mail

Get the new AOL app: [mail.mobile.aol.com](http://mail.mobile.aol.com)

Begin forwarded message:

**From:** Nicole Guerriero <[nikoli788@aol.com](mailto:nikoli788@aol.com)>

**Date:** March 10, 2019 at 20:06:05 EDT

**To:** [flashpoint321@gmail.com](mailto:flashpoint321@gmail.com)

**Subject:** K [REDACTED] calling time

Do I need to change the time that K [REDACTED] & I speak at night to earlier so we are not rushed? I have noticed that on occasion when I speak with her she has to get off the phone to get ready for bed or do other things.

Please let me know.

Thank you.

Sent from AOL Mobile Mail

Get the new AOL app: [mail.mobile.aol.com](http://mail.mobile.aol.com)

Begin forwarded message:

**From:** Nicole Guerriero <[nikoli788@aol.com](mailto:nikoli788@aol.com)>

**Date:** March 17, 2019 at 21:26:07 EDT

**To:** [flashpoint321@gmail.com](mailto:flashpoint321@gmail.com)

**Subject:** Re: Fwd: K [REDACTED]

Upon reading your email, which I did not read until after I spoke with K [REDACTED], I immediately spoke to Laura to discuss what you brought up. Although I am not having the same experiences with K [REDACTED], I will work with Laura to get to the root cause.

You once again suggested she has a mental health issue; she is nine years old and has been through a lot. I do not share in your opinion that this is evidence of a mental health issue as much as the normal behavior of a hormonal nine year old continuing to adjust and adapt.

I AM sorry that she was punished, however my statement to her had nothing to do with why she was punished nor was it condoning her behavior.

Sent from AOL Mobile Mail  
Get the new AOL app: [mail.mobile.aol.com](http://mail.mobile.aol.com)

On Sunday, March 17,  
2019, [flashpoint321@gmail.com](mailto:flashpoint321@gmail.com) <[flashpoint321@gmail.com](mailto:flashpoint321@gmail.com)> wrote:

You just told this kid that you are sorry she's punished.... did you even bother to read this email to see what she did?!

Bethany Fedorenchik  
Sent from my iPhone

Begin forwarded message:

**From:** [flashpoint321@gmail.com](mailto:flashpoint321@gmail.com)  
**Date:** March 17, 2019 at 05:51:09 EDT  
**To:** Nicole Guerriero <[Nikoli788@aol.com](mailto:Nikoli788@aol.com)>  
**Subject:** K [REDACTED]

This is at least the third or fourth time I am trying to reach out to you about K [REDACTED] and her decline in behavior. Like you, Laura reaches out to me after every session with K [REDACTED], whether she sees K [REDACTED] at school or she goes to your house. Laura has let me know, and I know she has let you know too, that she has noticed a decline and regression with K [REDACTED] and her communication and progress with Laura. K [REDACTED] now does not want to speak with Laura as she used to do, and shuts down. Behavior that was seen when K [REDACTED] was first with us.

I will be the first to admit that allowing K [REDACTED] to have a small box of candy at the movie theatre yesterday (purchased in the supermarket not the theatre bc it was both cheaper and smaller) was a mistake as she cannot handle sugar....evident from your phone call with her last night. However, this child's attitude and mood swings and behavior is changing, and not for the better. After you mentioned her studying the packet Ms. Brauner sent home with her for the break, it was like a switch was activated. She acted like with you, that was the first time she was hearing about it, and displayed her dislike immediately for having to study this break. On Friday when I picked her up from school and drove her to dance, I spoke to her about it and asked to see the packet right away. She immediately changed. She crossed her arms, turned away from me in the car, had a face on and ignored my request to see the packet. She then said "How did you know I had studying over the break?" I told her that Ms. Brauner sent an email home to all parents telling us to include you and me. She then said without hesitation "Well, if she didn't say anything I wasn't going to tell you I had studying to do". Then she turned to me laughing, like jeckyl and Hyde, and asked me if I smelled a smell in the car which was bad. I actually did and asked if she farted and she said "No....that's my body. Mom thinks I've been washing myself and I have not and I haven't been using deodorant either." She thought lying to you and purposefully not taking care of her hygiene was hysterically funny. Fast forward to after you got off FaceTime with her last night, and I heard the smart ass comment she made to Millie for no reason and I told her to knock it off and say she was sorry. After she hung up, I told her to finish getting ready for bed and the attitude continued. I told her she needed to get herself in check and she thought arguing with me was a good idea. I told her that when she was done getting ready for bed, she was to sit on the couch until it was time to go to bed and think about her

attitude and changing it. She did not, and then proceeded to have an out right temper tantrum like a two year old. She kept getting up off of the couch, and I told her to sit back down. I told her if she did not stop she would have everything taken away. She continued and started crying and yelling. She then said she wanted to go to her room to play with her toys and I said absolutely not. She got worse. I then got up, took her by the arm to just put her to bed, and that's when she decided to go rigid and drew back her legs and started to kick me as hard as she could. She threw herself on the floor and I had to come up under her arms to get her into her room, the whole time with her punching me and kicking me.

I've said it numerous times over the last few years, that there is something mentally going on with this kid, that Laura is not and has not been cutting it therapy wise for K [REDACTED], and that she needs a more consistent and intense therapist/therapy. I show Laura every time I try to reach out to you to let you know what goes on with K [REDACTED] and that you never respond or have any input back. She also let me know that you experience issues as well with K [REDACTED] attitude, but I'd never know that bc you don't communicate with me, and when that happens, it sends a very strong message and obvious one as well, not just to me, but to someone like Laura who is here to try and help our child, that you simply do not care. It seems like within the last month and a half, her behavior has been the worst that it's been in a very long time. Needless to say, she will spend the next two days punished and will be doing nothing but studying. What you decide to do with her when she is with you this week, is obviously up to you, whether you respond to me or you don't, I will continue to let you know what goes on with our child and document the behavior and issues with this kid.

Bethany Fedorenchik  
Sent from my iPhone

Begin forwarded message:

**From:** Nicole Guerriero <[nikoli788@aol.com](mailto:nikoli788@aol.com)>  
**Date:** March 18, 2019 at 10:52:30 EDT  
**To:** [flashpoint321@gmail.com](mailto:flashpoint321@gmail.com)  
**Subject:** Re: K [REDACTED]

I will no longer be replying to your continued harassing emails. Do not contact me unless there is a medical emergency involving K [REDACTED] or you are following the provisions set forth in the agreed upon parenting plan. I will be dealing directly with Laura regarding K [REDACTED]. I will mother/parent my child as I see fit.

Once again, please stop contacting me.

Sent from AOL Mobile Mail  
Get the new AOL app: [mail.mobile.aol.com](http://mail.mobile.aol.com)

On Monday, March 18, 2019, [flashpoint321@gmail.com](mailto:flashpoint321@gmail.com) <[flashpoint321@gmail.com](mailto:flashpoint321@gmail.com)> wrote:

Just wondering if you bothered to let Laura know about Colleen, and how she's been around constantly now to include sleeping over while K [REDACTED] is there, for the last month or two. I'm sure that change whether it's positive or negative for K [REDACTED], has nothing to do with affecting this child right? Flip flopping between men (Charlie) and now a woman (again).....because I'm sure that's not confusing K [REDACTED] at all. I let Laura know weeks ago about it, and she's been waiting for you to come clean, which you haven't....no surprise there. You just revert to your trusty "go to" answer of "it's nobody's business". That excuse has worn itself out Nic because our child is involved and has been for awhile. It's just so funny how you pick and choose which information to tell people for your own selfish needs. It's never about K [REDACTED] Nicole and what's ever best for

her....ever. It always has been and always will be what is best for YOU. You think Laura is blind to the fact that you bury your head in the sand and literally refuse to communicate with me to work with and for our child and her welfare? Do you really think that's helping the situation? It's making it worse and what happens is, K[REDACTED] is constantly getting trapped in the middle, a place she never ever had any business being put to begin with, yet here we are and here she suffers. I've literally become this child's whipping post because she is just so frustrated with the situation....a situation she still doesn't understand because there is zero normalcy or routine on your side. Everything is a constant surprise from you and she never knows what to expect. Should she tell me the truth or shouldn't she? Will she get into trouble if she does? She has told me on numerous occasions how you tell her not to tell me things, that you've told her to withhold information from me and that you've told her to lie to me. It eats her up inside because she doesn't know why, and she tells me it feels wrong when you do that to her because she says I always tell her it's important to tell the truth, and not to keep secrets. She asks me why I don't have different people coming and going at my house to include "friends" sleeping over..... she said your mom doesn't come around now and goes to Daytona a lot because of your "guest". Her words not mine. You seeing the common denominator here? You....

It's pathetically obvious that all you care about is your needs.... K[REDACTED] is getting older and she's getting wiser and she is smart. She sees who is truly here for her, actions, not words..... Colleen is your new distraction, your new monkey, jumping through all sorts of hoops and paying you all kinds of attention, and you're just eating it up. Meanwhile, I'm left to constantly clean up the pieces of a broken child. All she tells me is how she wishes it could just be you and her, like how it's me and her all the time. She says that Colleen is nice and all, but she constantly feels like she is chasing you for attention and that some one is always around and that she has to "try hard" to get you to pay attention to her. She says she always asks you to play games with her, and you tell her no.... that you just want to sit on the couch and watch TV or "relax" and basically not be bothered, again no surprise there because I know who you are and I lived that first hand. She sees and so does everyone else (not poor Colleen yet) and that's the sad reality and truth of it all, whether you choose to open your eyes or not. You haven't yet so I've learned to just accept that at 45 you never will. It's amazing when you get with the right therapy and treatment what you learn about Narcissistic personality disorder and how to actually SEE someone like you who suffers from it, and the damage and constant drama that someone like you has created and continues to create at other people's expense, even their own families and kids. Getting the right treatment to recover from someone like you and to build myself up stronger than I've ever been before, has been the best thing and best gift I've ever been able to give to K[REDACTED] and will be able to give to her for years to come.

Bethany Fedorenchik  
Sent from my iPhone



Begin forwarded message:

**From:** Nicole Guerriero <[nikoli788@aol.com](mailto:nikoli788@aol.com)>  
**Date:** March 18, 2019 at 12:08:59 EDT  
**To:** [flashpoint321@gmail.com](mailto:flashpoint321@gmail.com)  
**Subject:** Re: K [REDACTED]

You received something from somewhere today, which led you to Nova. Per the parenting plan (2.5 subsection A) I am entitled to that information. Either provide me with that or a contact person who will provide me access to the records.

Sent from AOL Mobile Mail  
Get the new AOL app: [mail.mobile.aol.com](http://mail.mobile.aol.com)

On Monday, March 18, 2019, [flashpoint321@gmail.com](mailto:flashpoint321@gmail.com) <[flashpoint321@gmail.com](mailto:flashpoint321@gmail.com)> wrote:

As soon as she is all done at Nova and a diagnosis has been concluded, I'll give you all the contact information there that you need, and you can get all that information yourself.

Bethany Fedorenchik  
Sent from my iPhone

On Mar 18, 2019, at 11:26, Nicole Guerriero <[nikoli788@aol.com](mailto:nikoli788@aol.com)> wrote:

Please forward me any documents that pertain to this diagnosis.

Sent from AOL Mobile Mail  
Get the new AOL app: [mail.mobile.aol.com](http://mail.mobile.aol.com)

On Monday, March 18,  
2019, [flashpoint321@gmail.com](mailto:flashpoint321@gmail.com) <[flashpoint321@gmail.com](mailto:flashpoint321@gmail.com)> wrote:

K[REDACTED] had to get glasses today as she has a vision problem and will be sent home with those glasses I bought today. I expect them to come back and forth between both homes. She also was pre-screened for high functioning autism such as Asperger's syndrome today for which she fell on the spectrum, and needs immediate and more intense screening which will be done at the pediatric center of Nova South University, which I will be taking care of. I would appreciate K[REDACTED] being ready to go when I pick her up on Saturday at 6:45 am, as we will be going out of town immediately from picking her up.

Bethany Fedorenchik  
Sent from my iPhone